

# STATE OF LOUISIANA LEGISLATIVE AUDITOR

Department of Natural Resources  
State of Louisiana  
Baton Rouge, Louisiana

December 4, 2002



***Financial and Compliance Audit Division***

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***Daniel G. Kyle, Ph.D., CPA, CFE  
Legislative Auditor***

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### **LEGISLATIVE AUDITOR**

**Daniel G. Kyle, Ph.D., CPA, CFE**

### **DIRECTOR OF FINANCIAL AND COMPLIANCE AUDIT**

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**DEPARTMENT OF NATURAL RESOURCES**  
**STATE OF LOUISIANA**  
Baton Rouge, Louisiana

Management Letter  
Dated November 25, 2002

Under the provisions of state law, this report is a public document. A copy of this report has been submitted to the Governor, to the Attorney General, and to other public officials as required by state law. A copy of this report has been made available for public inspection at the Baton Rouge office of the Legislative Auditor.

December 4, 2002



DANIEL G. KYLE, PH.D., CPA, CFE  
LEGISLATIVE AUDITOR

OFFICE OF  
**LEGISLATIVE AUDITOR**  
STATE OF LOUISIANA  
BATON ROUGE, LOUISIANA 70804-9397

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November 25, 2002

**DEPARTMENT OF NATURAL RESOURCES**  
**STATE OF LOUISIANA**  
Baton Rouge, Louisiana

As part of our audit of the State of Louisiana's financial statements for the year ended June 30, 2002, we considered the Department of Natural Resources' internal control over financial reporting; we examined evidence supporting certain accounts and balances material to the State of Louisiana's financial statements; and we tested the department's compliance with laws and regulations that could have a direct and material effect on the State of Louisiana's financial statements as required by *Government Auditing Standards*.

The Annual Fiscal Report of the Department of Natural Resources is not audited or reviewed by us, and, accordingly, we do not express an opinion on that report. The department's accounts are an integral part of the State of Louisiana's financial statements, upon which the Louisiana Legislative Auditor expresses an opinion.

In our prior management letter on the Department of Natural Resources for the year ended June 30, 2001, we reported findings relating to unauthorized fees collected and deficiencies in accounting for movable property. These findings have been resolved by management. Although the management letter also included a finding relating to noncompliance with performance progress report regulations, this area is no longer within the scope of our procedures.

Based on the application of the procedures referred to previously, all significant findings are included in this letter for management's consideration. All findings included in this management letter that are required to be reported by *Government Auditing Standards* will also be included in the State of Louisiana's Single Audit Report for the year ended June 30, 2002.

**Contracted Services Not Cost-Beneficial and Not Compliant**

The Department of Natural Resources (DNR) entered into a contract for accounting services that should be provided by a state employee and authorized the same contractor to perform additional unrelated services at additional cost. Louisiana Revised Statute (R.S.) 39:1497 requires, in part, that agencies obtain approval from the Office of Contractual Review (OCR) for professional service contracts exceeding \$5,000 and certify that a cost-benefit analysis has been conducted. The analysis should indicate that obtaining such services from the private sector is more cost effective than providing such services by the using agency itself or by agreement with another state agency.

## LEGISLATIVE AUDITOR

### DEPARTMENT OF NATURAL RESOURCES STATE OF LOUISIANA

Management Letter, Dated November 25, 2002

Page 2

DNR entered into a three-year contract with a local certified public accounting (CPA) firm for accounting services for the Coastal Wetlands Planning, Protection, and Restoration Act (CWPPRA) Program. The contract limit is \$243,000.

- For fiscal year 2002, DNR is paying the contract accountant \$40 per hour, which makes this position (based on the hourly rate) the seventh highest paid position in the department. Only DNR's secretary, undersecretary, information technology director, and three engineering positions have a higher hourly rate. In addition, the contract includes hourly rate increases for fiscal year 2003 to \$42 and for fiscal year 2004 to \$44.
- The accountant generally works full-time but does not receive any employee benefits from DNR. DNR paid \$76,440 for her services during fiscal year 2002.
- Based upon interviews with department personnel and the contract employee, the work performed does not require any specialized skills other than a general knowledge of accounting.
- DNR provided an inaccurate cost-benefit analysis to OCR that may have misled OCR in its consideration of the contract. OCR's form includes the following question: "If classified staff could perform the services, what are the classifications and cost of the staff required to provide the services?" DNR responded, "Three (3) Accountant positions approximate cost of \$125,000/year." However, management has acknowledged that this statement was not correct.

Management contracted for a CWPPRA position because two accountant positions were eliminated as a result of a staff reduction executive order. However, the cost savings intended by the executive order was not realized because DNR paid for a contract employee at almost twice the hourly rate of one of the accountant positions.

Although the scope of services was not within or related to the CWPPRA contract, DNR authorized the same CPA firm to perform an analysis of DNR's revenue collection process at an estimated cost of \$10,240 (an average rate of \$85.33 per hour). DNR did not enter into another contract or obtain the required approvals from OCR as required by state statutes. Without a contract, the department has no recourse if the work product is not acceptable or if there is a disagreement about the scope or cost of the project.

Management should consider all cost/benefit factors before entering into professional service contracts and should consult with the state Budget Office when there is a shortage of personnel that will significantly impact the operations of the state's programs. In addition, management should consult with OCR before requesting additional services based on an existing contract to ensure that the additional services

## LEGISLATIVE AUDITOR

### DEPARTMENT OF NATURAL RESOURCES STATE OF LOUISIANA

Management Letter, Dated November 25, 2002

Page 3

are allowable under that contract and should submit accurate information to OCR when seeking approval of new contracts. Timely consultations with OCR should ensure that the department is expending state monies in an appropriate manner and complying with applicable statutes relating to professional service contracts. Management concurred in part with the finding, noting that the contract position required specialized knowledge and skills. Management also provided plans for corrective action to resolve the finding (see Appendix A, pages 1-3).

#### **Related Party Transactions Not Properly Disclosed**

DNR did not disclose transactions with related parties to auditors or to the Office of Statewide Reporting and Accounting Policy (OSRAP) and may have violated R.S. 42:1113(A). Furthermore, the budget request submitted to the legislature included the line item that provided funding to one of the related parties but did not specifically name the entity or adequately explain the purpose of the funding. Management is required to disclose transactions with related parties to auditors as part of the audit process and to OSRAP as part of the Annual Fiscal Report (AFR). In addition, R.S. 42:1113(A) states, in part, that no public servant or member of a public servant's immediate family, or legal entity in which he has a controlling interest shall bid on or enter into any contract, subcontract, or other transaction that is under the supervision or jurisdiction of the agency of such public servant.

#### Council for the Conservation and Reinvestment of Outer Continental Shelf Revenues (Council)

The Council is a nonprofit organization that was created to promote favorable coastal and land/water policies and to encourage the federal government to share its offshore mineral revenue with coastal states. Jack Caldwell, DNR secretary, is the original incorporator of the Council.

- Mr. Caldwell and his confidential assistant, Celeste Bordelon, are Council officers and DNR's legal counsel, Warren Fleet, is the registering agent. Mr. Caldwell also serves as the Council's secretary/treasurer. These individuals did not disclose this information to auditors in representation letters that specifically requested information on relationships and departmental transactions with related parties. The department also did not disclose the information in its AFR that was submitted to OSRAP nor does DNR report operations and assets of the nonprofit in its AFR.
- DNR's budget request to the legislature includes a \$150,000 line item for contributions to the Council. However, the explanation of the line item

## LEGISLATIVE AUDITOR

### DEPARTMENT OF NATURAL RESOURCES STATE OF LOUISIANA

Management Letter, Dated November 25, 2002

Page 4

does not identify the Council; it simply states, "funding provided for offshore oil and gas production to secure additional revenues to the state in federal waters." Since fiscal year 1998, the Council has received \$700,000 from state appropriations.

#### Louisiana Water Trails

DNR paid \$13,178 to a vendor to establish Louisiana Water Trails, a non-profit volunteer organization for the operation and maintenance of water trails in the Atchafalaya Basin. DNR's executive director of the Atchafalaya Basin Program, Sandra Thompson Decoteau, is an officer of the organization. Management did not disclose this information in its AFR nor did Ms. Decoteau disclose the information in the representation letter on related parties that she provided to auditors. DNR does not include the operations or assets of the nonprofit in its AFR.

Management is apparently unfamiliar with auditing and financial reporting principles that define a related party and has not adequately reviewed the department's budget documentation to identify misleading wording related to the line item appropriation. Failure to properly disclose the related party transactions is not compliant with OSRAP's requirements for financial statement disclosure and the transactions may be in noncompliance with R.S. 42:1113(A). In addition, the legislature and the Office of Planning and Budget (OPB) did not have accurate and complete information when reviewing and approving the department's budget related to the line item appropriation that is used to fund the Council.

Management should recognize and emphasize the requirements to properly disclose related party transactions in the AFR and should consult legal counsel regarding compliance with related statutes. In addition, management should provide detailed information in the budget request to the legislature and OPB to ensure that the intended use of the funds is understood during the appropriation process. The department should also consider obtaining Board of Ethics opinions regarding these transactions. Management concurred with the finding and recommendations and outlined plans of corrective action (see Appendix A, pages 4-5).

#### **Inadequate Information Technology Policies**

DNR does not have adequate information technology policies to properly safeguard its electronic records and equipment. Good internal control requires that the department develop a written disaster recovery/business continuity plan and obtain access to an offsite disaster recovery facility to provide for the timely restoration of critical department operations in the event that normal data processing facilities are unavailable for an extended period of time. In addition, good internal control requires the department to periodically evaluate user IDs for business need.

## LEGISLATIVE AUDITOR

### DEPARTMENT OF NATURAL RESOURCES STATE OF LOUISIANA

Management Letter, Dated November 25, 2002

Page 5

A review of the department's information technology policies and practices disclosed the following deficiencies:

- DNR does not have a written disaster recovery/business continuity plan. The department's fiscal year 2000-2001 budget request included additional funding for hardware, software, networking, and personnel resources to provide necessary continuous information services in the event of a disaster. However, funds for these purposes were not made available. Furthermore, the department did not allocate current funds to obtain access to an offsite disaster recovery facility. Without provisions for an offsite disaster recovery facility, the department is unable to implement an effective disaster recovery/business continuity plan.
- DNR's production servers and backup files for those servers are in the custody of the Division of Administration's Office of Information Technology; however, DNR does not have an interagency agreement with the Office of Information Technology delineating responsibility for those servers.
- Sixty-eight (8.9%) of 757 currently active system user IDs were for terminated employees, vendors with expired contracts, or other individuals who no longer had a legitimate business need. These user IDs should have been terminated in the system.

DNR should (1) prepare a written disaster recovery/business continuity plan; (2) allocate current funds or request additional funds to contract for an offsite disaster recovery facility; (3) test the plan periodically and update it as necessary to ensure that the plan continues to meet the department's needs; (4) contact the Division of Administration to establish an interagency agreement with the Office of Information Technology; and (5) develop policies to ensure that only individuals with legitimate business need have access to the system. Management concurred with the finding and recommendations and outlined plans of corrective action (see Appendix A, pages 6-7).

#### **Improper Retroactive Pay Increases**

DNR improperly granted 12 employees retroactive pay raises resulting in payments totaling \$4,868. The Louisiana Attorney General opined in Opinion No. 86-88 that a retroactive pay raise is a bonus or donation, which is prohibited by Article VII, Section 14 of the Louisiana Constitution of 1974. Also, in *McElveen v. Callahan*, 309 So. 2d 379, 381 (3<sup>rd</sup> Cir. 1975), the court stated that "payments to be legal must be in the form of salary increases for the future, not extra compensation for past services rendered."



## LEGISLATIVE AUDITOR

### DEPARTMENT OF NATURAL RESOURCES STATE OF LOUISIANA

Management Letter, Dated November 25, 2002

Page 6

The secretary of DNR authorized retroactive salary increases for four employees receiving optional pay adjustments. The employees' pay increases were retroactive from 13 to 48 business days and payments totaled \$1,609.

The DNR assistant secretary of the Office of Mineral Resources held merit increases for eight employees until approving the merit increases on July 3, 2002. The merit increases were provided to the employees retroactive to the date that the employees were originally eligible for the merit increase. The employees' original eligibility dates ranged from 16 to 118 business days before the approval date and payments totaled \$3,259.

The department should refrain from making retroactive salary payments as described in the above situations. Management did not concur with the finding noting that the department acted in good faith in applying the rules and regulations promulgated by the Department of Civil Service (see Appendix A, pages 8-9). Management is seeking clarification from the Department of Civil Service on optional pay adjustments.

**Additional Comments:** Management should also seek clarification on its interpretation of Civil Service Rule 6.14(d). Since this rule is silent regarding the issue of retroactive pay, the Department of Civil Service may need to consider wording, such as seen in Civil Service Rule 6.7(c), to prevent any distribution of retroactive pay relating to merit increases.

#### **Questionable Claims in the Home Energy Rebate Option Program**

In a report dated November 27, 2002, the Investigative Division of the Office of the Legislative Auditor reported that a certified home energy rater submitted documents with false information, exaggerated costs, and forged signatures to DNR. As a result, DNR's Home Energy Rebate Option program (HERO), which is federally funded through the Department of Energy (Petroleum Violation Escrow Funds-Stripper Well - CFDA 81.SW2027), paid \$19,296 in questionable claims. Based on a review of 15 of the 20 existing homes rated by this rater, the report included the following information:

- Of the 15 homes examined, 10 contained modifications listed by the rater that were not actually performed, 11 contained costs that were significantly overstated, and 13 did not qualify for a portion or all of the HERO rebate.
- On 15 occasions, the homeowner or contractor noted that his or her signature was not genuine.

**LEGISLATIVE AUDITOR**

**DEPARTMENT OF NATURAL RESOURCES  
STATE OF LOUISIANA**

Management Letter, Dated November 25, 2002

Page 7

The findings from this report were referred to the District Attorney of the Nineteenth Judicial District of Louisiana for appropriate legal action. Recommendations for improvement and management's response to these findings may be found in the audit report referred to previously.

The recommendations in this letter represent, in our judgment, those most likely to bring about beneficial improvements to the operations of the department. The varying nature of the recommendations, their implementation costs, and their potential impact on the operations of the department should be considered in reaching decisions on courses of action. Findings relating to the department's compliance with applicable laws and regulations should be addressed immediately by management.

This letter is intended for the information and use of the department and its management and is not intended to be, and should not be, used by anyone other than these specified parties. Under Louisiana Revised Statute 24:513, this letter is a public document, and it has been distributed to appropriate public officials.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Daniel G. Kyle", with a stylized flourish at the end.

Daniel G. Kyle, CPA, CFE  
Legislative Auditor

SRT:EFS:RCL:dl

[DNR02]

## Appendix A

### Management's Corrective Action Plans and Responses to the Findings and Recommendations



M.J. "MIKE" FOSTER, JR.  
GOVERNOR

JACK C. CALDWELL  
SECRETARY

**DEPARTMENT OF NATURAL RESOURCES**

November 1, 2002

Dr. Daniel G. Kyle, CPA, CFE  
Legislative Auditor  
Office of the Legislative Auditor  
Post Office Box 94397  
Baton Rouge, Louisiana 70804-9397  
Dear Dr. Kyle:

RE: Contracted Services Not Cost-Beneficial and Not Compliant

Dear Dr. Kyle:

The Department of Natural Resources (DNR) concurs in part with your finding of "Contracted Services Not Cost-Beneficial and Not Compliant." I would like to review the circumstances that led to the contract and the results of the contract which will explain our position:

The Department of Natural Resources entered into a professional services contract to supplement the existing Accounting staff for accounting services for Coastal Wetlands Planning, Protection and Restoration Act (CWPPRA) projects for fiscal 2001-2002. As we entered into the budget process for fiscal 2001-2002, the Office of Management and Finance was confronted with a recommended staffing reduction from 61 to 55 over a two year period. The Office was also struggling to resolve prior audit matters, specifically, problems associated with untimely deposits and accounts receivables and CWPPRA program encumbrances as detailed in the 1998-1999 Legislative Audit Report. As we moved forward in the Executive Budget process for 2001-2002, with a recommended personnel authorization for the Office of Management and Finance of 55, DNR was concerned about our capability to perform our accounting functions adequately, especially in the context of the above discussed audit findings and the growing workload associated with the CWPPRA program. As a contingency, on March 15, 2001, we issued a Request for Proposal for assistance with CWPPRA's accounting functions with the intention of freeing up existing staff performing this function to address the above discussed problems. It was anticipated that to perform these functions, it would require three (3) accountants and the cost would be \$450,000 or \$150,000 per year for the three (3) year period of the contract. The contract was awarded on May 1, 2001, to be in place for the beginning of the fiscal year in the event we were not successful in reinstating

Dr. Daniel G. Kyle

November 1, 2002

Page 2

accounting positions. During the appropriations process, the Office was able to reinstate three (3) accounting positions, one (1) to assist with CWPPRA and two (2) for the accounts receivable problem.

As the Department analyzed the situation with the CWPPRA program, it became clear that one of the major problems facing the Department was reconciling the payments between the state and the various federal agencies and that there had been no final accounting on completed construction and de-authorized projects. This was a result of having to deal with five (5) different federal agencies, U.S. Fish and Wildlife, U.S. Army Corps of Engineers, National Marine Fisheries Service, Environmental Protection Agency and the Natural Resources Conservation Service, each unique in its reporting and accounting requirements. A decision was made to utilize the contract not for the original purpose as an extension of general accounting staff for the CWPPRA program but rather to obtain the services of an accountant, with expertise in dealing with federal agencies. The person being provided by the contract is a former accountant with approximately six (6) years of experience at the Corps of Engineers, New Orleans office, who agreed to move to Baton Rouge in conjunction with this assignment. As the Corps of Engineers is the fiscal agent for the other CWPPRA agencies, her experience and background has given her a unique insight into the problems we were experiencing. As of today, the Department has submitted all financial reports to the federal agencies through June 2002, through the efforts of this contract. This has resulted in actual collections of \$998,320 from our federal cost share partners and the issuance of an additional \$1,038,059 in invoices for payment. Current plans are to have the contractor meet and coordinate with the federal agencies prior to the end of the calendar year to establish standardized, mutually acceptable procedures for formal reporting by both DNR and our federal cost share partners. This, I trust explains the final configuration of the contract and describes how the nature of the work to be performed has greatly changed since its inception.

In the matter of the estimated cost to provide complete, ongoing accounting services for CWPPRA, the Department's position is that three (3) full-time accounting positions, at a cost of \$125,000, is a reasonable estimate. In the context of the final utilization of the contract for specialized accounting assistance with CWPPRA, it is our position that the activity being performed requires specialized knowledge as described above and there are no current state employees available with this specialized skill and the comparison to full-time permanent employees is not appropriate. It is also our position that if a regular employee without prior federal experience had been hired the Department would have not been able to be as successful in obtaining payments or producing invoices as we have in the 16 months the contract has been in effect.

Dr. Daniel G. Kyle  
November 1, 2002  
Page 3

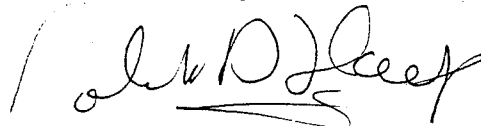
The Department did task under this contract a review of our accounts receivable procedures and their documentation. We wish to state this was done out of concern for the prior audit finding as it related to accounts receivable and our desire to have an independent evaluation and documentation of our procedures.

The Department was in error in obtaining assistance through this contract for review and documentation of accounts receivable procedures. Our initial interpretation of the contract led the Department to believe this work was allowable but we now concur with the finding and should have done an independent contract for this review and documentation. The Department will request approval to make payment for these services under R.S. 39:1524.

In closing, however, as the Legislative Auditor has found the overall contract to be objectionable due to what the Office characterizes as "not cost-beneficial," the Department will terminate the contract on December 31, 2002, to avoid a repeat audit finding next year and will seek the addition of an accounting position to perform the functions currently being performed in the upcoming budget process.

Should you have any questions regarding this matter, please call me at 342-4535.

Sincerely,

A handwritten signature in dark ink, appearing to read "Robert D. Harper", with a stylized flourish at the end.

Robert D. Harper  
Undersecretary

RDH/mg



M.J. "MIKE" FOSTER, JR.  
GOVERNOR

JACK C. CALDWELL  
SECRETARY

DEPARTMENT OF NATURAL RESOURCES

October 28, 2002

Dr. Daniel G. Kyle, CPA, CFE  
Legislative Auditor  
Office of the Legislative Auditor  
Post Office Box 94397  
Baton Rouge, Louisiana 70804-9397

Dear Dr. Kyle:

RE: Related Party Transactions Not Properly Disclosed

The Department of Natural Resources (DNR) concurs with the finding entitled "Related Party Transactions Not Properly Disclosed" and offers the following comments:

Secretary Jack Caldwell, Confidential Assistant Celeste Bordelon and DNR Legal Counsel Warren Fleet do have a related party transaction with the Council for the Conservation and Reinvestment of Outer Continental Shelf Revenues (Council). This was not disclosed due to simple oversight.

Ms. Sandra Thompson is an officer of the Louisiana Water Trails organization and also has a related party transaction relationship. This was not disclosed due to simple oversight.

DNR's budget request to the Legislature does include a \$150,000 line item to fund dues to the Council for the Conservation and Reinvestment of Outer Continental Shelf Revenues and the purpose is stated as "offshore oil and gas" in the 2001-2002 budget request.

When the related party representation letters are circulated next year to DNR staff, a memo pointing out the problem the Department has had in the past with disclosing related parties and an explanation of related party transactions will be enclosed. We will also submit a copy of the completed related party disclosure letters to the Division of Administration each year as a part of the Annual Financial Report Package.

Dr. Daniel G. Kyle


October 28, 2002

Page 2

In the budget request for fiscal year 2003-2004, funding requested for the Council will be described as "Dues for the Conservation and Reinvestment of Outer Continental Shelf Revenues - this supports an organization that promotes favorable coastal and land/water policies and encourages the federal government to share its offshore mineral revenue with coastal state and political subdivisions." It must be pointed out, however, that funding for the Council has had public discussion at both the House Appropriations and House and Senate Natural Resources Committees. It was also specifically noted in the Executive Budget, Analysis of Recommendation, Other Charges section with the description for fiscal 2001-2002 of "Funding provided for offshore oil and gas production to secure additional revenues to the state in Federal waters."

Should you have any questions concerning this response, please call me at 342-4534.

Sincerely,

A handwritten signature in dark ink, appearing to read "Robert D. Harper". The signature is fluid and cursive, with a large, stylized "R" at the beginning and a long, sweeping underline.

Robert D. Harper  
Undersecretary

RDH/mg





M.J. "MIKE" FOSTER, JR.  
GOVERNOR

JACK C. CALDWELL  
SECRETARY

DEPARTMENT OF NATURAL RESOURCES

October 28, 2002

Dr. Daniel G. Kyle, CPA, CFE  
Legislative Auditor  
Office of the Legislative Auditor  
Post Office Box 94397  
Baton Rouge, Louisiana 70804-9397

RE: Inadequate Information Technology Policies

Dear Dr. Kyle:

RE: Inadequate Information Technology Policies

The Department of Natural Resources (DNR) concurs with the finding entitled "Inadequate Information Technology Policies" and offers the following comments:

DNR does not have a formal Disaster Recover and Business Continuity Plan. While funding for this has been requested in the past, it was not recommended nor appropriated.

Custody of DNR's production servers and backup files was transferred to the Division of Administration, Office of Information as mandated by the Division of Administration. At no time was DNR offered any interagency agreement to formalize this relationship.

The user IDs referenced in the report should have been terminated.

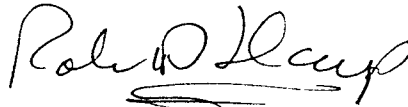
The Department will seek funding for a Disaster Recovery and Business Continuity Plan as the Department's first priority for funding for new or expanded programs for the 2003-2004 appropriation cycle. We have also already discussed the situation with the state's Chief Information Officer to solicit his support. In addition, we are in communication with the Division of Administration, Office of Information Technology to obtain an interagency agreement to formalize responsibility between DNR and the Division for production servers and backup files. And finally, a new policy will be developed to terminate user IDs for terminated employees and inactive contractors. DNR is planning to completely automate the process in the future "with zero day hire and zero day fire."

Dr. Daniel G. Kyle  
October 28, 2002  
Page 2

Rizwan Ahmed, Director of Information Technology, will be responsible for the above actions.

Should you have any questions concerning this response, please call me at 342-4534.

Sincerely,

A handwritten signature in dark ink, appearing to read "Robert D. Harper". The signature is fluid and cursive, with a horizontal line drawn underneath the name.

Robert D. Harper  
Undersecretary

RDH/mg



M.J. "MIKE" FOSTER, JR.  
GOVERNOR

JACK C. CALDWELL  
SECRETARY

**DEPARTMENT OF NATURAL RESOURCES**

November 15, 2002

Dr. Daniel G. Kyle, CPA, CFE  
Legislative Auditor  
Office of the Legislative Auditor  
Post Office Box 94397  
Baton Rouge, Louisiana 70804-9397

RE: Improper Retroactive Pay Increases

Dear Dr. Kyle:

The Department of Natural Resources (DNR) concurs in small part with your finding "Improper Retroactive Pay Increases."

The Optional Pay Adjustments in question were made effective as of the date the additional duties were assumed by the employee, but DNR respectfully submits that the payments did not become "retroactive" in the legal sense because of a delay in implementation.

DNR has conferred with the Department of Civil Service's General Counsel and awaits any changes or clarifications to the optional pay adjustment rules and will adjust our policies accordingly if necessary.

The Assistant Secretary of the Office of Mineral Resources held merit increases for eight employees in the Mineral Leasing Section of his office in association with employee counseling. Upon completion of counseling of the employees of this section, the merit increases were granted effective as of date of eligibility.

The Department acted under Civil Service Rule 6.14(d)

"The appointing authority may, at any time within three (3) years from the date an employee gained eligibility, grant an employee all or any one of the merit increases for which he has attained eligibility provided the employee has not received an official overall "Poor" or "Needs Improvement" Performance Planning and Review rating for the applicable year(s). A part-time employee shall receive the same credit he would receive if he were employed on a full-time basis."

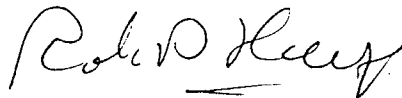
Dr. Daniel G. Kyle  
November 15, 2002  
Page 2

This provision of the rules allows for such adjustments. In this case DNR has fully complied with the appropriate Civil Service rules.

Please understand that DNR is simply trying to adhere to existing Civil Service rules as promulgated and our departmental policies as approved by the Civil Service Commission. The legality or constitutionality of a particular rule should be a matter between the Legislative Auditor, the Attorney General and the Civil Service Commission. All actions DNR has taken have been in good faith to comply with what, in our opinion, are the applicable rules and regulations in regard to pay of employees as promulgated by the Department of Civil Service.

Should you have any questions concerning this response, please call me at 342-4534.

Sincerely,

A handwritten signature in cursive script, appearing to read "Robert D. Harper".

Robert D. Harper  
Undersecretary

RDH/mg